



# California Fair Political Practices Commission

September 5, 1989

Wes Van Winkle  
Bagatelos and Fadem  
The International Building  
601 California Street, Suite 1801  
San Francisco, CA 94108

Re: Your Request for Informal Assistance  
Our File No. I-89-434

Dear Mr. Van Winkle:

This is in response to your request for confirmation of my telephone advice regarding certain provisions of the Political Reform Act.<sup>1</sup> Because of the general nature of your questions, and the need for clarifying some of the issues discussed in your letter, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2</sup> This letter restates the tentative advice given to you in our telephone conversations on August 8th and on August 23rd.

You have asked us to confirm the following:

1. Candidate-controlled ballot measure committees are not subject to any of the restrictions or limitations of Proposition 68 and 73.
2. Expenditures for the advertising of a candidate-controlled ballot measure committee could be made either from the ballot measure account or from the candidate's account.

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

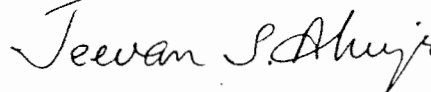
At the Commission meeting on August 15, 1989, the Commission indicated its desire to consider these issues and the issue of candidate-controlled ballot measure committees in general. Pending review of these issues by the Commission, we continue to advise that contributions to ballot measure committees which are not controlled by a candidate are not subject to the contribution limits in Propositions 68<sup>3</sup> and 73. When a ballot measure committee is controlled by a candidate, we also have advised that the ballot measure committee is not subject to the contribution limits in Propositions 68 and 73. (See, e.g., Olson Advice Letter, No. A-89-363, copy enclosed.)

Due to the uncertainty of the Commission's future action on this subject, we must be very cautious in giving any further advice. Since you have not indicated that your request concerns the actions of any specific candidate or committee, I cannot provide written confirmation of our conversations concerning the other questions we discussed.

I trust this letter has clarified the issues in our telephone conversation. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: Jeevan S. Ahuja  
Counsel, Legal Division

KED/JSA/aa

Enclosure

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<sup>3</sup> In In re Bell (1988) 11 FPPC Ops. 1, we advised that most of the provisions in Proposition 68, including the contribution limitation provisions therein, were not valid because of their conflict with Proposition 73. In a recent ruling in Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission (1989) \_\_\_ Cal. App. 3d \_\_\_, 89 Daily Journal D.A.R. 9863, the appellate court found some of the contribution limitation provisions to be valid. The Commission has directed us to file a petition for review in the California Supreme Court.

BARRY FADEM  
PETER A. BAGATELOS  
WES VAN WINKLE

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**FPPC**

**Jul 24 8 58 AM '89**

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July 19, 1989

Jeevan Ahuja, Esq.  
Legal Division  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Re: Confirmation of Telephone Advice

Dear Mr. Ahuja:

This is to confirm verbal advice given by you during our telephone conversation of July 17, 1989.

As you will recall, I had called concerning a quote in an article which appeared in the San Francisco Chronicle on Saturday, July 15. This article indicated that Attorney General John Van de Kamp intended to sponsor a ballot measure at the November, 1990 election, but would pay for any ballot measure advertising in which he appeared from his gubernatorial campaign committee account. The article indicated that this was a requirement of Proposition 73. I was unfamiliar with any such requirement, and indicated that I felt such a requirement would be contrary to previous written advice this firm had received which confirmed that candidate-controlled ballot measure committees are not subject to any of the limitations or restrictions of Propositions 68 or 73.

You confirmed that the quote incorrectly stated the law and that candidate-controlled ballot measure committees are not subject to any of the restrictions or limitations of Propositions 68 or 73.

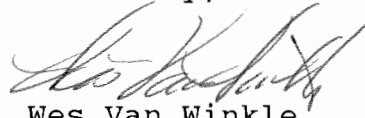
I then asked whether the expenditure of funds from a gubernatorial candidate committee's bank account for ballot measure purposes would violate the "trust" provision of Proposition 73. You indicated that although the FPPC staff has not yet addressed this question specifically, the trust provision was being broadly interpreted and would probably extend to and include any expenditures other than those for personal use. You stated that for this reason, expenditures for the advertising of a candidate-controlled ballot measure committee could be made either from the ballot measure account or from the candidate's account.

Jeevan Ahuja  
July 19, 1989  
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You finally indicated that although the FPPC would continue to view candidate-controlled ballot measure committees as being outside the scope of Proposition 73, the staff recognized that this was a potential loophole which could be exploited by candidates. You indicated that if the Commission believed the ballot measure exception was being abused by candidates in the future, it might then revisit this area and require allocation of ballot measure expenditures between candidates' ballot measure and candidacy accounts.

Thank you for your cooperation and assistance. Please contact me immediately if I have misstated or misunderstood any of your advice.

Sincerely,



Wes Van Winkle  
of Counsel  
Bagatelos & Fadem

WVW/mlq



# California Fair Political Practices Commission

July 25, 1989

Wes Van Winkle  
Bagatelos & Fadem  
The International Building  
601 California Street, Suite 1801  
San Francisco, CA 94108

Re: Letter No. 89-434

Dear Mr. Van Winkle:

We received your letter requesting confirmation of advice under the Political Reform Act on July 24, 1989. Your letter has been assigned to Jeevan Ahuja for response. If you have any questions, you may contact him directly at (916) 322-5901.

If the letter is appropriate for confirmation without further analysis, we will attempt to expedite our response. A confirming response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

You should be aware that your letter and our response are public records which may be disclosed to any interested person upon receipt of a proper request for disclosure.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh:confadv1